App F IX 4

Previous References

1943 Municipal

File No 177-43

Serial Nos 1, 2

Later References

GENERAL AND REVENUE SECRETARIAT

Serial Nos 2

20

Part B for Nov-Feb

SUBJECT

Ruling re: defraying of charges to be incurred for removing & reconstructing steps in front of private houses when drains are reconstructed

The D P W.
" Advocate general
" Chief Engr for Rds & Bdgs
" Irrigation
" Comptroller
" Dcs of Dists
" Rt Commr Bijapur
" Supdt Cen Prison Bijapur

L. 4540-26 dated 23.11.26.
Papers ordered

M 30/12

2703
pws.

GEN & L.S.G. BRANCH
17 DEC 1943
3774

Public Works Secretariat | File No | of 194 .

Serial No

Letter No 203/C LAD dated the 25th November 1943 from the Comptroller of Mysore

Requests for a definite ruling in the matter of defraying charges to be incurred in connection with removing and reconstructing steps in front of private houses when drains are reconstructed.

1) The extract of the objection raised by the Assistant Comptroller referred to in the letter has not been received. The subject relates to the L.S.G. Branch and this may be referred to that Branch for taking further action.

17/12
17/12

2) Asstt Secy L.S.G. for Govt Comptr's

16/12

Mr Meeson

17/12/43

3) A draft letter is put up to get a copy an extract of the Asst Comptroller's

Note —Contn sheet

WP 01094—G1 B—20 000—2-2-41

3774/2 ✓ 5406/2

objection note referred to in last para of the P W C, as the same is not forthcoming

Mem 2 6/1 sd/ Joseph 26/1/44 (Structural Subs)

Issue No L 7702 of 27-1-44 Subs A

Jol mag/2

From the ~~chief Engineer~~ comptroller

No L 85/CLAD of 24-2-44

Forwarding a copy of objection note in the subject

6/1 The comptroller requests definite rulings of govt in the matter of defraying charges to be incurred in connection with removing & reconstructing steps in front of private houses when drains are reconstructed

2/ The work of demolition and reconstruction of steps referred to is done at govt cost and the practice in vogue may perhaps be adhered to, as would otherwise create lot of inconvenience in the progress of drainage works.

6/1 The objections raised by the Asst comptroller in this respect is subto for perusal and orders

Mem 11/3 3/ The opinion of the Director of Public Health may please be called for & supply in the matter

Law Secy for 11/3/44

sd/ [illegible]

9) Forwarded unofficial note Compliments to the Director of Public Health for favour of remarks on the subject
C 81-1470
17-4 cm
Secretary
13/8/44 Law Dept

Uo No 276
13-3-44

C 81-1471 By 17-4-cm Bangalore dated 5-4-1944 17

10) Returned the enclosures to the Secretariat to Government, Law Department, Bangalore

Removing and reconstructing steps in front of private houses are generally being included in estimates for drainage works and the cost thereof brought in charges to the estimates. Audit now contends that such charges should be borne by the owners of houses. This involves a considerable deviation from the present usage, and it is not known if this can be justified. It would be better if the Government could ascertain its views and its opinion obtained as to whether Government can enforce in such cases payment by owners of houses.

G.G. Carmichael
Director of Public Health

SECT. DEPT. 10632 CONF. Cm. CC

Cm 19-4-44
from
Uo No 320/43-44 dated 20-4-44
11) forwarded unofficial note Compliments to the Advocate-General in response to request for views of Government
for Chamier
Secy to Govt
20/4/44 Law Dept

7 No 768/43 cm
By 20 4 cm

Uo No 93/43 cm
By 24 4 cm

12) The view expressed in parah 2 of the Comptroller's letter, that there can be no ownership of private persons in respect or structures put up by them (e g , steps) over

over municipal drains, is no doubt correct, but it is also an established principle of law that a custom or usage which is not plainly unreasonable or opposed to an express provision of the law, should be recognised and given effect to The usage in question, as stated in the note of the Director of Public Health, is in conformity with this principle, and so, cannot be said to be illegal It therefore seems to me that a just and equitable solution of the matter is that the - expense in question already incurred by the Bureau of Sanitary Engineering may be passed, and that it might be laid down for the future that the Bureau shall not undertake to rebuild any such structures dismantled by them, but leave it to the parties concerned to do so.

A

CSN/24 4 44

13) The summary of the case is as follows -
The comptroller requested definite ruling of govt in the matter of defraying charges to be incurred in connection with removing and reconstructing steps in front of private houses when drains are reconstructed
14) According to the principle in vogue, such cost is charged to the estimate of the work concerned But the Asst comptroller is of opinion that it is not a proper charge on govt

WD 01803—GPB—60 000—26 1 43

and that the cost should be recovered from the owners of houses

15) The D P H who was consulted in the matter states that the course suggested by the Board Dept involves a deviation from the present usage and that it is not justified to adopt it - Ref para 10

16) The Advocate general who's next referred to, agrees with the opinion of the D P H and at the same time he suggests That the expense in question already incurred may be passed and that it might be laid down for the future that the Bureau shall not undertake to rebuild any such structures dismantled by them, but leave it to the parties concerned to do so

17) Accordg to the view of the Advocate general, the cost of dismantling of the steps before private houses should be borne by the govt and the reconstruction of the dismantled steps should be left to the owners of the houses this course may perhaps create a lot of inconvenience both to the public and the Dept Hence it is for orders if the suggestions given by the D P H at para 15 supra may not be followed

Hence 1) The point for Consideration
27/4 is whether the Bureau of Sanitary Engineering should rebuild at the

Cost of-Govt the steps leading to private houses, whenever such steps are demolished for the purpose of repairing or reconstructing the drains laid in a municipality the Comptroller considers that it is not a legal charge on Govt & that the reconstruction of such steps should be done by the private parties themselves

Vide D P It states that it has been the practice all along to meet the charges of demolition & reconstruction of steps in front of private houses, the same being included in the drainage estimates. This course is said to be convenient from the point of view of the execution of the work & would also avoid wasting superfluous

vide The Advocate General who was consulted has expressed the opinion that a case to impose the action taken in this behalf cannot be said to be illegal but that it may be laid down that the owners of private houses should meet the cost of reconstructing the steps demolished by the Bureau in connection with repairing drains etc

In this connection Kind reference is invited to Sec 131 of the Mysore Towns Act 1951 according to which the construction of steps over drains in a public street is not considered an obstruction or an encroachment of municipal land but is allowed to private persons as a matter of ~~concession~~ Concession.

While such is the case, it would amount to an extra concession if the dismantled

steps are reconstructed at the cost
of Government. All that can be done
is to lay an ordinary slope so
as to connect the private premises & the
municipal land with adjoining

2) Having regard to all the facts of the
case, a ruling may be issued to
the effect that the cost of demanding
the steps may be met by the sum
included in the estimate but the
reconstruction of steps should be undertaken
by the owners of private houses. It is necessary at
the same time to intimate the citizens
beforehand definitely that the drainage
work will be taken up in the locality
and that, for purposes of laying drains,
(repairing or reconstructing) the steps
constructed over such drains leading to
private houses may have to be demolished
That the owners of such houses should
reconstruct them at their own cost

A

U U P 21

2) Such a course would mitigate the
inconvenience that might otherwise
be caused to the private people
and would not also subject the
Government to any embarassment or
litigation

B | 23 2/27/11 The expense already incurred and objected to in audit

5406/L

Submitted

May be approved

27) As is above are for approval

Lawrence 18/8/44

2nd Aug 44

25) I agree with the A G's views

the cost already incurred may

be sanctioned

26) The procedure suggested

in A may be followed in future

Lawrence

31-8-44

THE MINISTER
SG&PH
4 9 44
No 1729

Minister 2 SS 27)

Lawrence

2/9/44

FINANCIAL SECRETARIAL
UO No FI 1164
2 SEP 1944
BANGALORE

28) 12 9 44

Lawrence

13-9-44

29)

30) Draft submitted. May quote relevant

17/10 Lawrence Secretary Lawrence

in personal correspondence

Mudaliar 21 x 44

DEPUTY SECRETARIAL

5406/1 2709 (43-44) PW 1803 W 5466/1

The draft G.O. put up herein at S 6 is submitted for kind perusal.

It is not the work of Vaid Engineering now transferred from Deptt of P H D to P W D 2

24/10

Subd Effort does not seem to have been given to the G.O. as yet. The P.O. to seek work up after he consults in the matter and requests to put up a copy of the G.O. issued in the matter

24.10.44

To perusal before returning the file w.a.s.r.

Dy. Secy

27/10

Dy Secy

To perusal please

Dy. Secy. P.W. Deptt

28/10/44

28/10/44

31.10.44

P. Secy 1666

Joint Secy. to Govt. agreed

Dy. Secy. Finance Dept

10/11

LSG

Addl. Secy 10/11

10 —

52406

Hl 177-43-2

To,

The D P H

The Advo general

The chief Engineers for R & B & irrigation

The controller Treasury & D

The Hl commr & all

The D c's of Districts

Sir, I am directed to forward herewith a copy of Govt order No 45140 - S dt 8-11-64 on the subject noted above and to request that the instructions contained therein may be followed in the matter of appointment of Assistant Surgeons.

Yours faithfully,

Secretary to Govt

Health

30/11

ml 177-43-1 (165

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT OF
HIS HIGHNESS THE MAHARAJA OF MYSORE

No 203/C.L.A.D

Bangalore, dated 23rd November *1943*

3774 25th

SECRETARY TO GOVERNMENT Date 26/11/43 PWD ELECTL

From

M SHAMANNA, Esq , M A ,
Comptroller to the Government of
His Highness the Maharaja of Mysore
BANGALORE

To SECRETARIAT 2709 Date 26/11/43

THE SECRETARY
to the Government of His Highness the
Maharaja of Mysore, PUBLIC WORKS DEPARTMENT,
B A N G A L O R E

Sir,

I have the honour to state that in the course of inspection of the accounts of the Bureau of Sanitary Engineering by the Assistant Comptroller Local Audit Circle, Bangalore, in June 1943 it was noticed that charges to the extent of Rs 227-1-0 were incurred for removing and reconstructing steps in front of private houses when the drains were reconstructed The Sanitary Engineer with whom the point was discussed by the Assistant Comptroller stated that these charges have to be borne by Government as the parties will not, in most cases, agree to bear the cost and that it is difficult to enforce the same as it involves encroachment of the Municipal land in many cases and the intervention of the Revenue Department which is not readily obtained, due to long usuage and the distinctions of the Limitation Act etc He further stated that it has been the practice from a long time to do the work departmentally making necessary provision in the estimates and to raise the objection now, he felt, would create working difficulties.

Under the Municipal Regulations the drains and slabs in front of the Buildings are the property of the Local Bodies Owners of Buildings can only exercise the easement rights and cannot claim any legal proprietory rights. Even the construction of steps is not legally permissible and if allowed to be erected it can only be sufferance and subject to demolition by them whenever the drains have to be repaired or reconstructed

As a matter of fact, in connection with the very work referred to in the objection the citizens of Closepet have in a petition to the Sanitary Engineer stated that they would themselves construct the steps in front of their houses at their cost after the Department provided

covering

covering slabs over the drain. This is all the work that can legitimately be required to be done at Government cost. But in practice it is found that in every case the work of demolition and reconstruction is done at Government cost. Since a doubt is felt whether this is legally binding or available in spite of the opinion of the Military Engineer, I have brought it to the notice of Government for a definite ruling on the general issue, pending which objection will not be raised in similar cases.

An extract of the objections raised by the Assistant Comptroller is enclosed herein for reference of Government.

I have the honour to be,
Sir,
Your most obedient servant,

[illegible]
COMPTROLLER.

GOVERNMENT OF H H THE MAHARAJA OF MYSORE

COMPTROLLER'S OFFICE

No 285/CLAD Bangalore, dated 24 Feb 1944

The Secretary to the
Government of Mysore,
Law Department,
Bangalore

Sir,

As desired in your letter No L 700-2/III dated 27-1-44, I have the honor to forward a copy of the Assistant Comptroller's Objection Note dated 25-11-43 re charges to be incurred for removing and reconstructing the steps in front of private houses during the execution of drainage works

I have the honor to be,
Sir,
Your most obedient servant,

Comptroller for Comptr
absent from Hd Quars

Assistant Comptroller, Bangalore Local Audit Circle,
urred for removing and reconstructing the steps in
houses during the execution of drainage works

..

for dismantling stone steps and pials of houses and refixing
rate of 0-1-6 a square foot has been paid This work is not a
tendered one On the recommendation of the Sub Division Officer
that this work involved in addition to removing and refixing, hammer
dressing joints, rough dressing faces, cutting them to required sizes
and cement pointing to joints, and that a rate of 0-1-9 be paid for it
as against the tendered rate of 0-1-0, the Executive Engineer passed
0-1-6 It is not clear why the owners of houses originally encroached
on Municipal lands and built these structures, which involved Government
dismantling and rebuilding it An ordinary slab is all that can connect
the private premises and the Municipal land over a drain, and steps if
any have to be constructed in the owners land itself It may be therefore
intimated how the amount of Rs 227-1-0 paid in P B 500 & 566 of November
and December 42 is a proper charge on Government

"Copy" Rajale
Asst Comptroller,
Bangalore Local Audit Circle

LNS 'Copy'

G R S App F VI—G 2]

SUBJECT

Diary No of letter replied to 5406

General and Revenue Secretariat

( )

the *194*

Section Mt

File No 177—43

Serial No 2

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 18-11-1944

Signed by Mr G.R Rao

Read— correspondence ending with letter no 285/CHD dt 24th Feb 1944 from the Comptroller to Govt stating that charges to the extent of Rs 227-1-0 were incurred by the Bureau of Sanitary Engineering for removing & reconstructing steps in front of private houses when drains were reconstructed & soliciting special instructions in the matter of debiting such charges in future—

ORDER No L4540-8-8 dt 8-11-1944

The Comptroller to Govt states

[ay this be—

(i) printed ?

(ii) treated as a Standing Order ?

(iii) published in the Gazette English Part ?

(iv) translated ?

(v) placed at the disposal of the Press ?

(iv) published in the Gazette Kannada Part ?

2) Vide notes no C 81-14718 17 dt 14th Oct 1944 & no 93/43-44 dt 24th Oct 1944 of the Advocate General on the above subject.

(2)

states that in connection with the inspection
of the accounts of the Bureau of Land Inquiries
in June 1943, it was noticed that charges to the
extent of Rs 227-1-0 were incurred for removing
& reconstructing steps in front of private houses
when drains were constructed. The Land Enquiry
Officer was consulted on the matter, stated that these
charges have to be borne by Govt as the parties
will not in most cases agree to bear the cost
& that it is difficult to enforce the same.
The Comptroller adds that under the several
Municipalities Acts, the drains & slabs in
front of the buildings are the property of
the local bodies, the owners of buildings
only exercising ~~easing~~ easement rights
without claiming any proprietary rights. ~~List of Enclosures~~
Even construction of steps is not
legally permissible & if allowed, it can
only be by sufferance & subject to
demolition by the authorities whenever
drains have to be repaired or reconstructed
The Comptroller solicits ~~a~~ Examined by the ruling
ruling ~~laid down~~ on the matter

2/ The Director of Public Health states that
the cost is intended being met only from

WD 04162—GPB—60 000—23-10-41

funds

GENERAL AND REVENUE SECRETARIAT

(*Continuation sheet draft form*)

and that ~~that~~ to make any portion of the cost recoverable from Horseowners, would involve a deviation from the present usage. The ~~Attorney~~ Advocate General has also consulted on the matter, states that the expenditure already incurred may be passed & that it might be laid down for future that the Director of Engineering shall not undertake to rebuild any such structures dismantled by them, but leave them to be attended to by the parties

3) On a consideration of all the facts of the case, Govt are pleased to direct that the cost of dismantling the steps may be met by Govt & included in the Estimates

WD 0565—GPB— 22 500—8 11 38

estimate for the construction or repairs of drains, the necessary steps after the work is over being left to be undertaken by the owners of private houses. Due intimation in writing should, however, be given to the citizens beforehand defining that the drainage work will be taken up in the Municipality & that for purposes of laying drains (repairing or reconstructing) the steps constructed over such drains leading to private houses may have to be demolished & that the owners of such houses should reconstruct them at their own cost

4) The expenditure of Rs. 227-1-0 already incurred in this behalf & objected to in audit is sanctioned

Sd/- Lar Leg Asst.

To The Dir of Public Health
" Asst Advocate Genl
" Chief Engineer for Roads & Buildgs
" " " " Irrigation
" Comptroller Treasy & Ex Officio
" Dir of Agl
" Mem Bd of Revenue (Land Customs)
" Mem Con. Bd of Revenue (Land Customs)

will be issued on a Sc. if app
for
19/10/45

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

R E A D -

Correspondence ending with letter No.285/CLAD dated the 24th February 1944 from the Comptroller to Government of Mysore stating that charges to the extent of Rs.227-1-0 were incurred by the Bureau of Sanitary Engineering for removing and reconstructing steps in front of private houses when drains were reconstructed and soliciting specific instructions in the matter of debiting such charges in future

2. Unofficial Notes No.C 81-1471 dated the 17th April 1944 of the Director of Public Health and No.93/43-44 dated the 24th April 1944 of the Advocate General on the above subject

O R D E R No. L4540-8/Rul177-43-2

Bangalore, Dated 8th November 1944.

The Comptroller to Government states that in connection with the inspection of the accounts of the Bureau of Sanitary Engineering in June 1943, it was noticed that charges to the extent of Rs.227-1-0 were incurred for removing and reconstructing steps in front of private houses when drains were constructed. The Sanitary Engineer, who was consulted in the matter, stated that these charges have to be borne by Government as the parties will not in most cases agree to bear the cost and that it is difficult to enforce the same The Comptroller adds that under the several Municipalities Acts, the drains and slabs in front of the buildings are the property of the local bodies, the owners of buildings only exercising easement rights without claiming any proprietory rights Even construction of steps is not legally permissible and if allowed, it can only be by sufferance and subject to demolition by the authorities whenever drains have to be repaired or reconstructed The Comptroller solicits the issue of a definite ruling in the matter.

2. The Director of Public Health states that the cost is hitherto being met out of the Government funds that to make any portion of the cost recoverable from borrowers, would involve a deviation from the present usage The Advocate General who was also consulted in the matter, states that the expenditure already incurred may be passed and that it might be laid down for future that the Bureau of Sanitary Engineering shall not undertake to rebuild any such structures dismantled by them, but leave them to be attended to by the parties

3 On a consideration of all the facts of the case, Government are pleased to direct that the cost of dismantling the steps may be met by the Government and included in the estimates for the construction of repairs of drains, the reconstruction of the steps after the work ~~is done~~ being left to be undertaken by the owners of private houses. Due intimation in writing should, however, be given to the citizens beforehand definitely that the drainage work will be taken up in the Municipality and that for purposes of laying drains (repairing or reconstructing) the steps constructed over such drains leading to private houses may have to be demolished and that the owners of such houses should reconstruct them at their own cost.

4 The expenditure of Rs.227-1-0 already incurred in this behalf and objected to in audit is sanctioned

By Order,

SECRETARY TO GOVERNMENT
Law Department.

To - The Director of Public Health in Mysore
" Advocate General in Mysore
" Chief Engineer for Roads and Buildings
" " " for Irrigation
" Comptroller through Financial Secretariat
" Deputy Commissioners of Districts.
" Municipal Commissioner, Bangalore City Municipality.
" President, Mysore City Municipal Council.